

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Implementation of Section 9)
of the Communications Act)
Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

MD Docket No. 94-19

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF
McCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby submits its reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹ As discussed below, McCaw concurs in concerns raised by several of the opening comments in this proceeding regarding the mechanisms to be employed by the Commission in determining subscriber counts and for protecting the confidentiality of subscriber information that otherwise would be revealed in connection with the payments to be made by providers of common carrier cellular and paging operators.

First, the initial fee schedule adopted by Congress² and reflected in the Notice contemplates that Part 22 cellular

¹ Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, FCC 94-46 (Mar. 11, 1994) ("Notice").

² Section 9 of the Communications Act was added by § 6003(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §§ 6003(a), 107 Stat. 397 (Aug. 10, 1993), and is codified at 47 U.S.C. § 159.

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and paging carriers would be assessed an annual regulatory fee of \$60.00 per 1,000 subscribers in fiscal year 1994.³ Neither the statute nor the Notice, however, provide any definition of the term "subscriber." The absence of a clear statement of what is intended to be encompassed by this term will lead to confusion on the part of carriers and the possible underpayment or overpayment of applicable regulatory fees.

McCaw supports the recommendation of The Personal Communications Industry Association ("PCIA") that the term "subscriber" be equated with the Commission's established definition of "customer."⁴ Thus, a "subscriber" should be deemed to be an "individual[] or member[]" of the general public receiving service."⁵ As PCIA aptly points out, employing this definition would be consistent with Commission statements and is a rational approach.⁶ In particular, "[b]y computing their fees based on the number of customers on their billing list, Part 22 and PCS licensees will ensure a uniform and appropriate application of the fee schedule."⁷

³ Notice at ¶ 79.

⁴ PCIA at 3.

⁵ Id. at 4.

⁶ Id. at 3-6.

⁷ Id. at 6.

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Second, PCIA, the Cellular Telecommunications Industry Association ("CTIA"), and GTE Service Corporation ("GTE") have urged the Commission to set a specific date for determining the number of subscribers to be considered in calculating the applicable fee.⁸ The commenters have correctly pointed out the fact that, over the course of a year, the number and identity of subscribers served by a carrier likely will significantly fluctuate. Adoption of a date certain for assessing the number of subscribers will ensure that carriers will be able readily to calculate their fee payments and thus avoid inadvertently subjecting themselves to penalties under the new rules. McCaw urges adoption of PCIA's suggestion that October 1, as the start of the fiscal year, be selected as the date for the subscriber count.⁹

Third, McCaw strongly concurs in the concern raised by CTIA that "the Notice does not address the need to safeguard the confidentiality of subscriber data reported to the Commission by wireless carriers."¹⁰ While large cellular carriers like McCaw often report aggregated subscriber information, McCaw firmly believes that licensee-by-licensee disclosure of specific market subscriber information could

⁸ PCIA at 7-8; CTIA at 3; GTE at 5.

⁹ PCIA at 8.

¹⁰ CTIA at 5. See also GTE at 5-6.

have detrimental effects on competition.¹¹ This problem can be addressed in the manner suggested by CTIA and GTE -- the amendment of Section 0.457 of the Commission's Rules¹² to include a new provision that "specifically will shield from public disclosure reports and regulatory fee computations based on a common carrier's number of subscribers."¹³

Conclusion

In order to ensure that carriers are able to comply effectively and efficiently with the new regulatory fee payment schedule, and to minimize the burdens imposed on Commission staff in connection with the collection and enforcement of those requirements, the final rules adopted in this proceeding should include provisions to accomplish the following goals:

- The term "subscriber" should be defined to refer to an individual or member of the general public receiving service.
- A date certain should be established for carriers to determine the number of subscribers to be used in calculating the applicable regulatory fee.
- Fee information based on subscriber counts and the underlying information on the number of subscribers should be protected from public disclosure.

¹¹ See CTIA at 6; GTE at 5-6.

¹² 47 C.F.R. § 0.457 (1992).

¹³ CTIA at 8.

Such action will facilitate the equitable and understandable application of the new regulatory fees.

Respectfully submitted,

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